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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION: HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Letter dated 30 March 1998 from the Deputy Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the Chairman of the Commission on Human Rights

I have the honour to present herewith the views of the Turkish Government on the report entitled "Human rights and population transfer" prepared by the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Al-Khasawneh (E/CN.4/Sub.2/1997/23), which, in our view, contains many essential errors and is, therefore, misleading.

The Special Rapporteur, in paragraph 37 of the report, defines the Turkish presence in Cyprus as a "prolonged military occupation" resulting from the "Turkish occupation of northern Cyprus since 1964" and relates the situation to its commitments under the Geneva Conventions. There is an obvious mistake in these statements both in terms of the concept and in terms of history.

The Turkish presence in Cyprus is not an "occupation" but a lawful presence based on international agreements. On the other hand, the Rapporteur also fails to correctly refer to a date when he claims that the so-called "Turkish occupation" started in 1964. 1964 is, in fact, the date of the deployment of the United Nations peacekeeping forces (UNFICYP) on the Island due to the armed onslaught of Greek Cypriots against the Turkish Cypriots to establish the Enosis rule, that is union with Greece, on the Island.

The Turkish Forces in Cyprus are not in any way involved in the activities of the Government in North Cyprus. The evolutionary administrative developments since 1964 have culminated in the establishment of the Turkish Republic of Northern Cyprus (TRNC) with all the organs of government, particularly, the executive, the legislative and the judicial organs. The Turkish Republic of Northern Cyprus has its own system of laws - the civil law is based on English common law. The territory of the TRNC is not an "occupied" territory, nor a "subordinate" administration of Turkey. The TRNC exercises effective and exclusive jurisdiction in the northern part of Cyprus.

In paragraph 42, the Rapporteur states that "Turkey sought to avoid responsibility for certain acts in Northern Cyprus by claiming that the territory in question was administered, militarily, by the Turkish Republic of Northern Cyprus (TRNC)" and refers to the decision of the European Court of Human Rights in the Loizidou v. Turkey case.

The reference to the Loizidou case in this context is misconceived and purposely misleading. This is clear also by the reference in the same paragraph to the alleged "claim" of Turkey that the "territory in question was administered, militarily, by the Turkish Republic of Northern Cyprus".

The Turkish position all through the proceedings before the European Commission and Court of Human Rights has been that Turkey has no "jurisdiction" under article 1 of the European Convention and that the facts complained of do not come under its responsibility, and that such acts are not imputable to it because of the existence of governmental organs of the Turkish Republic of Northern Cyprus, which exercise exclusive and effective authority and jurisdiction over the territory and people under its control. Turkey never argued that the Turkish Republic of Northern Cyprus is "administered militarily", as the Rapporteur is saying.

Furthermore, in the Loizidou case, the European Court of Human Rights refers to Turkey's military presence in Cyprus in the context of "jurisdiction" and, in demanding access by Mrs. Loizidou to her property, has not used the word "occupation", which is often used by the Greek and Greek Cypriot side in order to slander Turkey and the TRNC.

It must also be stressed that the finding of "jurisdiction" under article 1 of the European Convention does not necessarily involve "responsibility" and/or "imputability". It should be recalled that in Chysostomos and Papachrysostomou v. Turkey, the European Commission on Human Rights acknowledged the exercise of substantial jurisdiction by Turkish Cypriot authorities in North Cyprus. In its report of 8 July 1993, the publication of which was authorized by resolution DH(95) 245 of the Committee of Ministers of the Council of Europe, the Commission found that the arrest of the applicant Greek Cypriot demonstrators in the border area, their subsequent detention by the authorities of North Cyprus, and their trial by a Turkish Cypriot court could not be attributable to Turkey, but, by implication, to the authorities of North Cyprus (para. 170 of the Commission's report). The Commission found that the applicants' detention, trial and imprisonment were lawful under article 5 of the Convention as having been "in accordance with a procedure prescribed by law", that is, domestic law applicable in Northern Cyprus.

As for paragraph 43 of the report, in the Loizidou judgement, the Court conceded that in the case of an unrecognized government "international law recognizes the legitimacy of certain legal arrangements and transactions ... for instance as regards the registration of births, deaths and marriages", but it could not, on that basis, conclude that by operation of a particular article of the TRNC Constitution, the applicant could be deemed to have lost title to her property (paras. 45 and 46 of the judgement). The reference by the Court in this context was, by implication, to certain acts of the TRNC, such as those relating to births, deaths, marriages, etc. How the Rapporteur refers to such acts "outside the territory of a State that are taken to be evidence of government activity for the purposes of occupation under article 6 of the Fourth Geneva Convention" is difficult to understand. It would seem that the Rapporteur has confused acts of de facto (unrecognized) States which have effect in international law, with those of States under "occupation".

In paragraph 62, the Rapporteur refers to a case "involving fighting between Turkish armed forces and Kurdish separatist guerrillas". The reality is, however, that there is not a "separatist guerrilla" group, but a terrorist organization which is supported from outside Turkish territory aiming at its integrity and is responsible for the loss of more than 5,000 innocent civilian lives including children, the elderly, women, teachers and doctors.

This reality is clearly established by respective decisions of the European Court of Human Rights and, therefore, does not leave room for subjective speculations on the qualifications of this terrorist organization, as revealed in the following: in its decision concerning the case Aksoy v. Turkey (dated 18 December 1996, No. 100/1995/606/694, para. 70), the Court has established that "the particular extent and impact of PKK terrorist activity in South East Turkey has undoubtedly created, in the region concerned, a 'public emergency threatening the life of the nation'". In another decision concerning the case of Akdivar et al. v. Turkey (dated 16 September 1996, No. 99/1995/605/693, para. 70), the Court noted "at the outset that the situation (is) characterized by significant civil strife due to the campaign of terrorist violence waged by the PKK". Another example was that the Court, in its decision in the case concerning Zana v. Turkey (dated 25 November 1997, No. 69/1996/688/880, para. 58), explicitly established that "the PKK (is) a terrorist organization which resorts to violence to achieve its ends".

The above judgements have also been confirmed in the annual report of the United States Department of State published in October 1997 under the title "Patterns of Global Terrorism", in which the PKK is described as a "Marxist-Leninist terrorist group seeking to set up a Marxist state in south-eastern Turkey". The PKK is also depicted as a terrorist organization by many European States.

I request, Mr. Chairman, that these views be circulated as a document of the Commission on Human Rights.

(Signed) Aydin DURUSOY
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